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HUMAN RIGHTS COMMITTEE

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SUMMARY RECORD OF THE 1241st MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 15 July 1993, at 3 p.m.

Chairman: Mr. ANDO

CONTENTS

Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Third periodic report of Hungary (continued)

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The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Third periodic report of Hungary (continued) (CCPR/C/64/Add.7; HRI/CORE/1/Add.11)

1. Mr. BÁRD (Hungary) said that, whereas the third periodic report was mainly concerned with the structure of the legal system of Hungary, future reports would deal with the application of specific laws. The main issue facing the country was whether the very necessary changes had been introduced rapidly enough, a question which he was inclined to answer in the affirmative. The attitude towards human rights had in fact been evolving gradually under the surface for many years even before the recent political changes had occurred, so that in Hungary the administration and the judiciary had not stood in the way of progress.

2. The three specific problems which had to be addressed were the compensation of victims of past human rights violations, the disqualification from office of those responsible, and criminal liability for human rights violations. Unfortunately, investigations of all three of those problems had been seriously hampered by the unreliability - or in some cases non-availability - of the files. Two draft bills had been tabled in Parliament in connection with those problems, one by the Government and the other by the opposition parties, but unfortunately there was little agreement between them and little possibility of compromise. It was to be hoped that by October the Government bill for the disqualification at least from high office of persons responsible for such human rights violations would have been passed by Parliament.

3. In regard to criminal liability for human rights violations, an Act had been passed by Parliament two years previously, but had been ruled unconstitutional by the Constitutional Court pursuant to the statute of limitations. The Government had accordingly drafted a further bill whereby prosecutions would only be brought in cases where the statute of limitations did not apply, for example, war crimes and crimes against humanity. No decision on the most recent Government bill had yet been reached by the Constitutional Court.

4. Another concern had arisen out of article 3 of the Constitution, which stated that parties should not exercise power directly. The article had been drafted as a reaction to the old system of party dictatorship, whereby one party had arbitrarily assumed the functions of the State. Legislation had accordingly been formulated to prevent any recurrence.

5. A further subject to be addressed was discrimination and xenophobia. Negative attitudes to aliens and minorities, if present at all, were to be found only among small groups. Not only the Government, but also Parliament and even the President himself had made every effort to combat and eradicate such attitudes. As a general pointer to the situation, he drew attention to the fact that one particular non-governmental organization (NGO), the Martin Luther King Organization, which was active in the anti-discrimination

field, had been and was still working in Hungary and had provided not only economic assistance but also psychosocial advisory services. Where xenophobia reached the stage of qualifying as criminal activity, the authorities would as a matter of course institute legal proceedings. That applied also to the incitement of hatred against foreigners. The Romanies represented a social rather than a minority problem, which formed part of a more general and wide-ranging issue, namely that of assisting the victims of the change-over from a centrally planned economy to a market economy. The Government had passed measures affording financial support to the Gypsy population and to other distressed minorities also.

6. In answer to a question by Mrs. Evatt, he said he did not think that anti-Semitism was really a problem in Hungary. Both the Government and Parliament had been very active in compensating the victims of fascism, the previous regime having signally failed to do so. The present Government had found itself obliged to clear up many of the unfortunate consequences of both fascist and communist regimes.

7. The question of the protection of women had also been raised. As Mrs. Evatt had pointed out, it was important to ensure that protective measures in favour of women were not themselves discriminatory, but there was no doubt whatever that in the past women had been obliged for economic reasons to undertake very arduous physical activities. Protective measures were therefore definitely required and their possible discriminatory aspect could be considered at a later date. The participation of women in the higher echelons of political life and the administration was certainly less than might be desired, although an altogether different situation obtained in the legal profession where, for example, 60-70 per cent of all judges were women. The numbers of women occupying high posts in industry had also increased over the past few years.

8. It had been asked whether or not the bodies representing minority populations were in operation yet. Unfortunately they would be able to begin their activities only after the next general election. In regard to the expulsion of refugees, the wording of paragraph 13 of the Hungarian report was in fact closely based on that of the Geneva Convention and Protocol relating to the Status of Refugees. The expulsion of refugees from Hungary was prohibited except for reasons of national security and public order. He pointed out in that connection that, although there were refugee camps in Hungary, the incident referred to by Mr. Prado Vallejo, of which the authorities were fully aware, had not occurred in a refugee camp at all. Some idea of the Hungarian attitude to refugees could be gleaned from the fact that Yugoslav refugees who arrived in Hungary as a result of the crisis in Bosnia and Herzegovina, were not sent to refugee camps but were distributed among Hungarian families to prepare the ground for their subsequent resettlement in their country. The Hungarian families had been given financial incentives to accept them.

9. A question had been asked concerning protection of the rights of Hungarian nationals outside Hungary. In that respect, the Government was doing its best over what was essentially a political and moral rather than a legal problem.

10. It was not totally accurate to have stated in paragraph 14 of Hungary's report that "persons considered as refugees shall be deemed to be Hungarian citizens for the purposes of application of law". Such was not the case, for example, with regard to the right to vote or employment in posts for which Hungarian citizenship was a legal requirement. He apologized for that error.

11. On the relationship between domestic law and international treaty obligations, and on the role of the Constitutional Court in reconciling those two domains, he said that since the late 1980s all domestic legislation affecting the rights of Hungarian citizens had had to be embodied in duly promulgated acts of Parliament, as had all international treaties affecting the rights and duties of citizens. Law-decrees passed before that date were also assimilated to acts of Parliament. The risk of conflict between the provisions of international treaties and of domestic law was thus mainly theoretical; but should conflict occur, the Constitutional Court would accord precedence to the former, the ultimate goal being a monistic system.

12. In the special case of perceived or alleged conflict between the provisions of international treaties to which Hungary was a party and those of Hungarian criminal law, proceedings in the relevant court were suspended pending a pronouncement by the Constitutional Court. Decisions by the latter body were, as a rule, effective as of the date of publication, but entry into force could be delayed if consequential modifications to legislation were necessary, or rendered retroactive if the review of past court decisions in criminal matters was called for.

13. Concerning the review of administrative decisions, he explained that "judicial review" was not an altogether satisfactory rendering of the relevant term in Hungarian. While, as a general rule, the outcome of a review that found against an administrative decision was annulment of that decision, in certain circumstances the court could modify such decisions. The announced establishment of administrative courts, had, in fact, been delayed by the ruling of the Constitutional Court that certain provisions of the draft law on the subject that would limit access to such courts were unconstitutional. In the meantime, but as a merely temporary measure, the Government had set up special departments to handle appeals against administrative decisions within the framework of the regular judicial system.

14. On the subject of human rights education, he submitted that it was difficult to prepare information about human rights instruments that was easily accessible to the general public. A small but increasing quantity of such material, in the form of booklets and other publications, was, however, available. Human rights formed a special subject in the curricula of Hungarian universities, compulsory at the Budapest Law School but optional elsewhere. The Ministry of Justice organized regular training courses on human rights for members of the legal profession, with lectures by researchers and other specialists from international agencies concerned with human rights as well as Hungarian professors. Steps were taken to familiarize medical doctors and prison staff with human rights and with the basic human rights instruments. As pointed out briefly in paragraph 3 of the report, State secretaries responsible for specific human rights tasks relating, inter alia, to the problems of minorities, church and religious affairs and the affairs of Hungarians abroad had been appointed. A Human Rights Commission had been

established within the framework of the Hungarian Parliament; and the new human rights section in the Ministry of Justice was instrumental in ensuring that domestic legislation was consistent with Hungary's international treaty obligations.

15. On the subject of the Ombudsman of Civil Rights, he had neglected to specify in his earlier remarks that appeals against final administrative, but not judicial, decisions were within the purview of the Ombudsman's Office. Citizens had a time-limit of one year following the exhaustion of all other remedies in which to lodge appeals with the Ombudsman.

16. Concerning legislation on states of emergency, the elaboration of a new law was in progress, care being taken in the preparatory work to ensure respect for all the relevant provisions of the Covenant.

17. With regard to the status of the Constitutional Court, he explained that although its members were appointed by Parliament, it was - unlike its predecessor, the Constitutional Council - a completely separate body.

18. In reply to a further question by Mr. Francis, he said that, although the new review institution that could be activated by the Public Prosecutor might give the impression of being a second ordinary remedy or instance of appeal, its extraordinary nature and the preconditions for its use precluded it from being considered as signifying the introduction of a two-tier system of legal remedies, which was something for the future.

19. In response to a further question by Mr. Wennergren, he said that the cost of pressing appeals against administrative decisions through the ordinary courts was variable, but generally subject to the rules governing civil procedure; in some cases, the cost of appeals was fully assumed by the State; representation by a lawyer was not mandatory in the case of such appeals.

20. In reply to a further question by Mr. Prado Vallejo, he emphasized that the initial provision of article 3 (3) of the Hungarian Constitution was that political parties might not exercise public power directly: the fundamental concern of the lawmakers had been to prevent a repetition of what had occurred in the past. And if it was true that the closing of certain public offices (the positions of judge, prosecutor or high-ranking police officer, for example) to members or officers of a political party was at variance with the principle of non-discrimination, recent Hungarian history had demonstrated the high price to be paid for the politicization of public office.

21. The CHAIRMAN, after consulting members of the Committee on the next stage of the procedure, invited the Hungarian delegation to respond to the questions in section II of the list of issues, which read:

"II. Right to life; prohibition of slavery, servitude and forced labour; liberty and security of person and treatment of prisoners and other detainees (arts. 6, 7, 8, 9, 10 and 11)

(a) In view of the decision of the Constitutional Court declaring the death penalty unconstitutional (para. 37 of the report), has the

death penalty been abolished as a result and has any consideration been given to accession to the Second Optional Protocol to the Covenant?

(b) What are the rules and regulations governing the use of weapons by the police and security forces? Have there been any violations of these rules and regulations and, if so, what measures have been taken to prevent their recurrence?

(c) What concrete measures have been taken by the authorities to ensure the observance of article 7 of the Covenant? Can confessions or testimony obtained under duress be used in court proceedings?

(d) Please clarify under which circumstances a person may be sentenced to community service (see para. 49 of the report).

(e) Does temporary compulsory medical treatment include deprivation of liberty? Please provide information on the conditions of such treatment (see paras. 53 and 48 of the report).

(f) What is the reason for extending the duration of remand in custody from 72 hours to 5 days (see para. 52 of the report) and the period before a defendant is brought to trial from 6 to 8 days (see para. 56 of the report)? Please clarify the meaning of the term 'as soon as possible' in article 55, paragraph 2, of the Constitution and comment on the compatibility of that provision with article 9 of the Covenant.

(g) Can a detainee have any recourse against arbitrary detention, comparable to habeas corpus or amparo?

(h) What are the current status and content of the draft law governing the enforcement of punishment mentioned in paragraph 60 of the report?

(i) Please provide information on arrangements for the supervision of places of detention and on procedures for receiving and investigating complaints."

22. Mr. BÁRD (Hungary), referring to paragraph (a), said that, as the Constitutional Court had determined the unconstitutionality of the death penalty, no legislative action had been required to abolish that penalty, the court's decision having annulled the relevant provisions. Certain modifications in the Penal Code with regard to life sentences that had been called for following the abolition of capital punishment had entered into force in May 1993. Ratification of the Second Optional Protocol to the Covenant was currently being discussed in committee in the Hungarian Parliament and, it was hoped, would become effective in the autumn of 1993.

23. Concerning paragraph (b), he said that a law-decree of 1963 (now transformed into an act of Parliament) permitted the use of weapons by the police if that was unavoidable, in certain circumstances and subject to certain conditions which he enumerated. Such use must be preceded by a series of preventive and coercive measures, also set out in the law. Any use of weapons must be the subject of a report by the police officer directly

involved, and - whether or not injury had occurred - of investigation. The new Bill on the Police contained an entire sub-chapter on the rules governing the use of firearms. In 1992, weapons had been used by the police on 20 occasions; no case of unlawful use had been found to have occurred; death had resulted in one of those cases and injuries in seven. In 1992, the police had fired 65 warning shots. Special training courses were organized for police officers in order to study the legal provisions governing the use of weapons; directives had been issued calling for more sparing use of weapons.

24. With regard to paragraph (c), he said that, in 1989, the Code of Criminal Procedure had been amended in a number of ways to ensure respect for personal freedom and other constitutional rights. A specific rule explicitly provided for the exclusion of any evidence obtained through the violation of any provision of the Code. The so-called "Miranda warning", the effect of which was to render statements by suspects inadmissible as evidence unless accompanied by a declaration, signed by the person concerned, that he or she had been informed of the right to remain silent, had been introduced into Hungarian law.

25. Concerning paragraph (d), he said that the preconditions for being sentenced to community service were not specified in detail in the Criminal Code as amended in 1993. In general, however, community service was intended to function as an alternative to imprisonment for terms of up to one year or to fines. Apart from the obligation to carry out the prescribed work during at least one day per week, the personal freedom of those sentenced to community service was not restricted. The performance of such service was not enforced; but failure or refusal to comply with the sentence were sanctioned by transmutation, one day of imprisonment replacing each day of community service ordered by the court.

26. Temporary compulsory medical treatment, the subject of paragraph (e) of the list of issues, could be a coercive measure as an alternative to custody on remand, or a penal measure for insane offenders. It was implemented in a special institution, the Forensic Institute for the Observation and Treatment of Mental Illness, and in both cases there was deprivation of liberty. Temporary medical treatment of a coercive nature, which could be ordered on the basis of an expert medical report in cases of relatively violent crime, was subject to review after six months during the pre-trial phase and - according to legislation in the pipeline - after the same period during the trial phase. After one year, the necessity of temporary medical treatment was to be reviewed by the Supreme Court. Defendants and/or their lawyers could move the termination of temporary medical treatment at any time. Courts were under an obligation to terminate such treatment if the medical report demonstrated that its necessity had ceased to exist; court decisions were subject to appeal.

27. Individuals who had committed violent acts against the person and been found criminally insane could be committed for compulsory medical treatment, classified as a penal measure in the Criminal Code. Committal must be reviewed annually and release must be ordered if the continuation of detention was found to be unnecessary. A review procedure might be initiated by the

person concerned as well as by his or her lawyer or spouse, and by the prosecutor. Again, the court decision might be appealed against by those who had initiated the review procedure.

28. Compulsory coercive and penal medical treatment was supervised by the Ministry of Social Welfare and administered according to provisions more or less identical to those applying to any hospital for the mentally ill.

29. With regard to paragraph (f), he explained that the reason for changes in the duration of remand in custody was that, as from 1989 pre-trial detention had ceased to be the responsibility of the prosecutor but instead was ordered by the courts. The relevant legislation had been amended to bring it into line with article 9 (3) of the Covenant according to which anyone arrested or detained on a criminal charge must be brought promptly before a judge or other officer authorized by law to exercise judicial power. The Hungarian Parliament did not regard prosecutors as suitable in that respect due to their lack of impartiality, although admittedly the prosecuting agency was an independent organization and subordinate to Parliament.

30. As a result of the amendments to legislation, three agencies were now involved in the detention procedure. While arrest was ordered by the police, after a period of 72 hours it was the prosecutor who was required to submit a motion to the court for pre-trial detention on which the court must rule within a period of five days.

31. As for the extension of the period of police arrest from six to eight days in the case of flagrante delicto offences requiring special accelerated procedures, bearing in mind that it was the prosecutor and not the police who ordered extension of the detention period after 72 hours had elapsed, it had been found that the six-day period within which the trial had to be held (counting from the date of the perpetration of the act) was so short that prosecutors were unable to avail themselves of the special procedure. That was indeed regrettable since its application was also in the interests of the accused in that it ensured a speedy trial. It had therefore been decided that a more realistic time-limit should be set.

32. Nevertheless, the Government was not satisfied with the existing legislation and a bill had been submitted to Parliament two years previously recommending a return to the former legislation, under which the maximum duration of police arrest should not exceed 72 hours, with no exceptions for any type of criminal procedure. Moreover, the Budapest chief prosecutor had instructed all prosecutors in the capital to act as rapidly as possible to enable the courts to take a decision within 72 hours. Those instructions had generally been complied with, which proved that it was not unrealistic to bring cases before the courts within 72 hours, at least not in the capital.

33. As to paragraph (g), he said that in general all persons held in detention who were suspected of a criminal offence had access to habeas corpus. There were only a few types of detainees for whom judicial review was not allowed under current legislation: soldiers placed under strict arrest or in solitary confinement as a disciplinary sanction, and

persons detained with a view to their expulsion from the country. However, a draft bill to amend the current legislation would shortly be submitted to Parliament to make adequate provision for such cases.

34. With regard to paragraph (h), he said that the law on the enforcement of punishment had entered into force on 15 April 1993. The new legislation covered three main areas. Firstly, prisoners had acquired additional rights, including the right to appeal to the correctional judge against decisions by the prison institution, as well as the right to appeal to a second-instance court against most decisions adopted by the latter. In the case of solitary confinement, inmates were entitled to appeal to the correctional judge, thereby delaying the implementation of the most severe disciplinary sanction.

35. The second aspect of the new legislation was the encouragement of greater contact between prisoners, their families and the community at large. On the recommendation of the prison institution, prisoners might be granted regular leave at weekends and even allowed to work outside the institution without supervision. Furthermore, disciplinary sanctions restricting visits or receipt of correspondence had been abolished.

36. Thirdly, correctional judge procedure had been more closely aligned with ordinary criminal procedure. As a general rule, issues coming under the competence of the correctional judge would be decided at a trial in the presence of the inmates, their defence counsel and the prosecutor. Decisions taken by the correctional judge could be appealed against to a court of second instance.

37. Referring to paragraph (i), he said that places of detention were supervised by public prosecutors at least once a month, or more often if necessary. Their duties included examining the relevant documentation, checking the detention time-limits, as well as investigating the treatment of detainees and the protection of their rights. If necessary, interviews with inmates could be conducted more frequently in private. The public prosecutors considered complaints lodged by inmates and took the necessary steps to comply with simple requests. They were also entitled to initiate proceedings against employees of the institution in cases of suspected negligence. Detainees also had the possibility of referring their complaints to the chief or any other competent officer in the institution and in certain cases even to the courts.

38. Under the new legislation, detainees could also appeal to the court against decisions ordering solitary confinement and request less severe treatment. While the supervision of places of detention had traditionally been the exclusive responsibility of the public prosecutor, certain issues might also be handled by the correctional judge relating to the enforcement of punishment and more than 3,000 requests addressed to public prosecutors. Those statistics pointed to the need for the more vigilant supervision of prison conditions and treatment of inmates in future.

39. The CHAIRMAN invited the delegation of Hungary to respond to the questions in section III of the list of issues, which read:

"III. Right to a fair trial (art. 14)

(a) What guarantees are there for the independence and impartiality of the judiciary?

(b) What are the status and content of the Bill on the establishment of administrative courts which has been submitted to Parliament in December 1989? (See para. 79 of the report)

(c) Please clarify the meaning of the term 'quasi-offences'. Are such offences cognizable by courts? (See para. 79 of the report).

(d) Please provide further information on the position of the legal profession and on the free legal aid system in Hungary."

40. Mr. BÁRD (Hungary), replying to question (a), said that all decisions relating to the appointment of judges and the expiry of their term of office were taken by the President of the Republic, although the opinion of self-governing judicial bodies was sought in that connection. As for independence from the Executive, the Minister of Justice no longer had any responsibility with regard to nominations except the right to appoint the presidents of county courts. There again, the competent self-governing judicial body was consulted on the suitability of prospective candidates.

41. Regarding the independence of the parties involved in court cases, criminal legislation contained numerous provisions for exclusion procedures, which could be applied for instance when a judge was deemed too biased to try a case. As in most other countries, exclusion procedures could be activated by either of the parties or the judge, as required.

42. With regard to paragraph (b), as he had indicated earlier, the bill on the establishment of administrative courts had not been submitted to Parliament and thus for the time being administrative cases were dealt with by the ordinary courts.

43. Referring to question (c), he explained that "quasi-offences", which might also be termed regulatory offences or administrative infractions, were at present dealt with by administrative agencies. An important distinction worthwhile mentioning was that a theft of 2,000 forints or more was considered a criminal offence while theft of a smaller sum was deemed a regulatory offence. Under current legislation there was no access to the courts against the decisions of administrative bodies in respect of such offences. However, a bill would shortly be submitted to Parliament which, if enacted, would provide for limited judicial review. Furthermore, in accordance with the Government's new legislative plans, the Ministry of the Interior would have to prepare a preliminary draft law before the end of the year on account of Hungary's accession to the European Convention on Human Rights.

44. Concerning question (d), he said that the situation of the legal profession in Hungary had changed considerably in the past two years following

the major reforms to the relevant legislation. Under the former system, it had been the Ministry of Justice and the Lawyers Chamber that had determined the number of lawyers admitted to the Bar, whereas the new legislation allowed for any law graduate with suitable professional qualifications and legal premises to join.

45. Furthermore, lawyers now acted as individuals rather than as partners under the "work collectives" of the former regime. Such changes had naturally affected the provision of legal aid. Formerly, although there had been no special legal aid institution as such, free legal advice and representation had been much easier to obtain as individual cases had been assigned to lawyers' collectives by the police or public prosecutors. The lawyer in charge of the collective would then entrust the work to one of his employees. Now however, for a variety of reasons, individual lawyers appointed to provide legal aid could not always be relied upon. The whole system was proving less satisfactory and would have to be reviewed.

46. The CHAIRMAN, after thanking the delegation of Hungary for its detailed replies to questions raised in the list of issues, invited additional questions and comments from the Committee.

47. Mr. HERNDL, referring to issues relating to article 6 of the Covenant, welcomed the news that the Hungarian Parliament was in the process of ratifying the Second Optional Protocol aiming at the abolition of the death penalty. He had also noted with satisfaction the decision of the Constitutional Court to the effect that the death penalty was not compatible with article 54 of the Hungarian Constitution.

48. However, in order to ensure the proper implementation of the provisions of article 6, the incorporation of the right to life in the Constitution would not suffice and, a number of additional measures were required. In that connection, he welcomed the very progressive legislation introduced in Hungary relating to the use of force and firearms by the police. None the less, from the Hungarian delegation's remarks he understood that there were still many circumstances in which the use of firearms was permitted; in that connection, he expressed particular concern with regard to the concept of unavoidable necessity, which was rather too broad. He also inquired what disciplinary measures existed under Hungarian law for police officers who failed to respect the relevant regulations.

49. The provisions of article 54 of the Hungarian Constitution relating to the prohibition of torture were even stricter than those set forth in article 7 of the Covenant. Since Hungary had already ratified the Convention against Torture and submitted its first report on the subject, he presumed that it had complied with the main obligations under that instrument, namely the prevention of acts of torture through suitable legislation and the recognition of torture as a criminal offence. He would welcome more information on the matter, which was not sufficiently covered in either the core document (HRI/CORE/1/Add.11) or the report (CCPR/C/64/Add.7); NGOs had reported some minor cases of alleged degrading treatment, which pointed to the need for the competent authorities to investigate such allegations and institute criminal proceedings where necessary.

50. Referring to the explanations concerning the time-limits for detention, in connection with article 9 of the Covenant, he requested an example of the type of flagrante delicto offence for which a speedy trial was deemed necessary.

51. Lastly, while welcoming the establishment of administrative courts, he stressed the need for those courts also to have jurisdiction in respect of so-called "quasi-offences", in accordance with the provisions of article 14 of the Covenant.

52. Miss CHANET asked why Hungary had elected to give constitutional status to some articles of the Covenant and only legislative status to others. She also queried the accuracy of the table contained in paragraph 5 of the report intended to indicate how the rights enshrined by the Covenant were protected by the Constitution. For instance, she found it hard to believe that the very specific legal safeguards afforded by article 14 of the Covenant were fully covered by article 57 (1) of the Constitution as indicated. While presumption of innocence was guaranteed by the Constitution, the principle of non bis in idem was only provided for in the Criminal Code.

53. She further observed that recent changes in Hungarian legislation had not been sufficient to ensure the minimum safeguards listed under article 14 (3). That was particularly surprising in view of Hungary's ratification of the European Convention on Human Rights, article 6 of which was similar in content. She stressed the importance that the Committee attached to the safeguards listed under (a), (b) and (c) of that paragraph and suggested that Hungarian legislation should be brought into line with those provisions without further delay.

54. There were similar discrepancies between article 55 of the Constitution and article 9 of the Covenant. She inquired whether current Hungarian legislation guaranteed that anyone arrested was informed at the time of arrest of the reasons for such action, as stipulated in article 9 (2) of the Covenant.

55. She also expressed concern regarding the possible duration of pre-trial detention. According to article 9 (3) of the Covenant, anyone arrested or detained on a criminal charge should be brought to trial promptly, whereas article 55 of the Constitution used the much broader term "as soon as possible". That provision also stipulated that custody for those awaiting trial should be the exception rather than the general rule. That did not appear to be the case under the Hungarian Constitution, and she would therefore welcome further clarification in that respect.

56. As for the possible extension of remand in custody for up to five days, she pointed out that neither the Covenant nor the European Convention on Human Rights laid down specific time-limits in that regard, although the Committee's jurisprudence pointed to a limit of four days' custody.

57. She asked whether the relatives of detained persons were duly informed of their arrest and whether appropriate medical attention was provided, where necessary.

58. Mr. MAVROMMATIS sought confirmation that, under Hungarian legislation, evidence obtained under duress could not be used in court proceedings. He recalled that, with a view to discouraging physical and psychological harm during police inquiries, some countries had introduced special legislation providing that evidence obtained under such circumstances was inadmissible where it could be proved that the prisoner had been forced to confess. He inquired whether similar measures had been implemented in Hungary.

59. With regard to the independence and impartiality of the judiciary, he would welcome further details on the tenure of judges elected to the Constitutional Court. He had some doubts about the advisability of electing judges, a process which always entailed an element of politicization. However, he had no quarrel with the system employed in Hungary so long as certain minimum safeguards were guaranteed. One of the most important was that the appointment of judges should be made by a body which was totally independent from the judiciary. A further vital safeguard related to security of tenure whereby either a suitable retirement age was stipulated, with the guarantee that the judge's decision to retire at any other time would not entail any loss of benefits, or appointments were made for life, which appeared to be a less popular solution. Security of tenure should also mean that all benefits, including pension and salary, as well as other conditions of service, remained unchanged during the term of office. A further safeguard concerned immunity from prosecution, whereby a judge should not be held accountable for any action taken in the course of his duties except in cases of dishonesty, which should be subject to disciplinary procedures. He sought assurance that such fundamental safeguards for securing the independence of the judiciary existed under Hungarian law.

60. Mr. SADI, noting that environmental concerns had a bearing on the right to life, asked what measures had been taken since 1989 to restore Hungary's notoriously devastated environment.

61. Mrs. EVATT referred to a report submitted by Amnesty International containing allegations that asylum-seekers had been beaten by police at the Kerepestarcsa detention camp in 1992, and that persons from the Middle East arrested for illegal currency transactions had been tortured. In both cases, an official investigation had been requested, but no response had been received from the Hungarian authorities. Did any complaints mechanism exist for dealing with allegations of ill-treatment, torture or deaths of persons held in custody, and what proceedings were taken to investigate such complaints?

62. Regarding prison conditions, she asked whether young persons and women had separate and equal access to educational and training facilities and open prisons, and whether they were accommodated in prisons close to their families. What measures were taken to protect victims of sexual assault from excessive cross-examination and questionings about their private lives during trial proceedings?

63. Mr. AGUILAR URBINA said that the racial attacks by skinheads that had been reported were deplorable, but that the attacks by members of the police

force alleged to have taken place in the Budapest Fifth District were even more reprehensible. Had those incidents been judicially investigated and, if so, what had been the outcome?

64. He asked what was involved in the mandatory medical care referred to, why it was compulsory, and how it related to article 7. Was the national service available as an alternative to military service performed within the armed forces, or did it comprise some form of non-military service? Regarding the qualifications required of persons wishing to practise as lawyers, what was meant by "proper premises to set up an office", and might that requirement not perhaps involve an element of economic discrimination? He would also welcome further information on the exceptions to the principle of non bis in idem referred to. Lastly, was it obligatory to take account of the opinion required before members of the judiciary and Supreme Court were appointed or dismissed?

65. Mr. EL SHAFEI noted that, according to paragraph 56 of the report, a defendant could be brought to trial within eight days, as opposed to six days under the previous regulation. What was the reason for that change? According to paragraph 55, Act XIV of 1990 had abolished the medical treatment of alcohol addicts in an institute. What were the reasons for its abolition, and had the Act proposed a more satisfactory alternative?

66. Mr. NDIAYE noted that the report made no illusion to drug addiction in Hungary. Did that mean that the problem did not exist, or had ways been found of circumventing it? A rate of 63 abortions per 100 live births (para. 41) seemed excessively high: was contraception not practised in Hungary? He also sought clarification of the phrase in parentheses in paragraph 57 of the report, and of the "identity number" referred to, without further explanation, in paragraph 92 (d).

67. Mr. BÁRD (Hungary) sympathized with Mr. Herndl's concern regarding the wide range of circumstances in which the use of firearms was permitted. However, the new legislation showed that an effort had been made to include rules on the preconditions for the use of firearms. Regarding sanctions and the consequences of the illegal use of firearms, in addition to an administrative investigation, criminal proceedings could be initiated if the rules for their use had not been observed and if criminal negligence could be established.

68. Regarding the criminalization of torture, the Criminal Code included several criminal offences less serious than torture, such as infliction of injury by a public official in the course of his duties, which was treated more severely than infliction of injury in other contexts. Even deprivation of liberty in the course of an official procedure was treated as a specific crime, and the April 1993 amendment of the Criminal Code had increased the punishment for that offence.

69. The term "speedy trial" was misleading, since it was the pre-trial proceedings, and not the trial itself, that were expedited. The accused must be brought before the court within eight days of the offence; but the trial itself was conducted according to the normal rules. The procedure could be used to try offences carrying a sentence of up to five years' imprisonment,

where no legal or factual complications arose, and where the defendant had been apprehended in flagrante delicto or had admitted guilt. In the absence of any of those preconditions, the court would order the prosecutor to conduct a new investigation. The reason for extending the time limit from six days to eight days was simply that a six-day deadline did not allow time for adequate preparation of the court proceedings.

70. On articles 9 and 14, Miss Chanet had asked why some provisions of the Covenant had the rank of constitutional provisions, while others, such as the principle of non bis in idem, were regulated only at the level of ordinary legislation. One possible explanation was that the Parliament elected in 1990 had noted that some provisions of the Covenant were already reflected in existing legislation; another was that the provisions adopted at constitutional level (such as the presumption of innocence) had implications going beyond the narrower framework of criminal procedure. He would return to the question after consulting his colleagues.

71. He agreed that article 6 of the European Convention would pose problems for Hungary: hence its decision to enter a reservation to that article where regulatory offences were concerned. Regarding the other safeguards under article 9 of the Covenant, various laws dealing with detention explicitly mentioned the obligation to inform the detainee of the reason for detention. There was no change regarding the requirement to notify the family, which continued to exist under the new legal system. The detainee also had the right to be examined by a doctor on request.

72. Regarding the rules of evidence, the law stated that illegally obtained evidence could not be used. He supposed that in most legal systems such rules would be developed through judicial practice rather than through the law itself. There was currently no Supreme Court case law on the issue. On the vexed question of the advisability of electing judges, to which he would return, most of the safeguards referred to by Mr. Mavrommatis were to be found in the Hungarian legal system.

73. In response to Mr. Sadi's question, he said that attitudes and policy towards the environment had changed. However, it would take time for the effects of that change to become perceptible. The Environment Act was still pending before Parliament.

74. A complaints mechanism existed to deal with allegations of ill-treatment by the police. In 1990 changes had been introduced to ensure impartial adjudication of such cases; complaints against the police were no longer dealt with by the military courts, but by the ordinary courts. In 1992 there had been 131 cases in which police officers had been indicted for causing injury in the performance of their duties.

75. Special prisons existed for juvenile offenders and females, and those held in pre-trial detention were separated from convicted prisoners. Conditions in those prisons were less strict than in other prisons. The new Law on Implementation of Punishment and Penal Sanctions stipulated that convicted persons should be placed in prisons close to their place of residence. However, it was sometimes difficult to comply simultaneously with that requirement and with the requirement to ensure the separation of women

and juveniles from adults. Prisoners serving their terms under the lighter prison regime also had the possibility of spending weekends with their families.

76. In response to Mrs. Evatt's question about the cross-examination of victims of sexual abuse, he pointed out that the cross-examination procedure did not exist in the Hungarian legal system.

77. It was important not to give undue prominence to the phenomenon of racial attacks by skinheads, which were a comparatively rare occurrence. The police had been firm in handling such cases, and the Criminal Code provided for severe penalties, which were imposed by the courts in practice. While it could be argued that the solution to the problem did not lie in the severity of the punishment, the legal instruments to combat it nevertheless existed in the Hungarian legal system.

78. A question had been asked about the nature of mandatory medical treatment. He cited the hypothetical case of a mentally ill offender who killed 10 people. Persons committing such serious crimes of violence could not be held criminally responsible, but had to be confined. The State thus had a duty, not merely to isolate them, but to try to cure them.

79. The criterion that persons wishing to practise as lawyers should have "proper premises" meant nothing more than that those premises should be large enough to accommodate clients and the lawyer's files. On the question concerning the abolition of medical treatment of alcohol addicts in an institute, under the previous Criminal Code it had been possible to order such persons to undergo medical treatment as an alternative to prison. While the idea was basically a good one, it had proved difficult to apply and had therefore been abandoned.

The meeting rose at 6.10 p.m.